75-1157

IN THE

Supreme Court of the United States

TOWN OF LOCKPORT, NEW YORK, and FLOYD SNYDER,
Individually and as Supervisor of the Town of Lockport,
Appellants,

vs.

CITIZENS FOR COMMUNITY ACTION AT THE LOCAL LEVEL, INC.
and FRANCIS W. SHEDD, Individually and on Behalf of
All Others Similarly Situated,
Appellees,

and

JOHN J. GHEZZI, Secretary of State of the State of New York, ARTHUR LEVITT, Comptroller of the State of New York, WHITNEY T. BARNUM, (successor to LaVerne S. Graf), Clerk of the Niagara Co... Legislature, County of Niagara, New York, and RAYMOND A. BEITER, (successor to Kenneth Comerford), County Clerk of the County of Niagara, New York,
Appellees.

MOTION TO AFFIRM AND BRIEF OF APPELLEES

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Appellees.

Motion to Affirm

Appellees, the Clerk of the Niagara County Legislature and County Clerk of the County of Niagara, pursuant to Rule 16 (d) of the Rules of the Supreme Court of the United States, move to affirm the final judgment of the District Court on the ground that the decision of the District Court is unquestionably correct under the principles of laws established by the United States Supreme Court as to warrant no further review of the Supreme Court.

Questions Presented

The Appellants present in their Jurisdictional Statement certain questions which Appellees believe should be decided as follows:

A. These Appellees contend that this case is not moot since the 1974 Charter is now part of the District Court's Judgment. It is the operative form of government for Niagara County and has been since January 1, 1976. A County Executive has been elected and is currently administering Niagara County Government and implementing all the provisions of the 1974 Charter.

B. It has always been the position of these Appellees that the Judgment regarding the 1972 Charter was applicable to the 1974 Charter and these Appellees made a motion to amend the District Court's Judgment to so consider the 1974 Charter, which motion was denied by the District Court. The United States Supreme Court subsequently directed the District Court to consider the 1974 Charter on remand, which was done, and the 1974 Charter was then made part of the District Court's decision and upheld.

C. It is the position of these Appellees that *28 U.S.C., Section 2283* gives the United States District Court authority to protect its judgment by the issuance of an injunction against State Court's action. The action restrained were appeals to the Appellate Division, New York State Supreme Court or Court of Appeals from a result in the State Supreme Court fully agreeing with the District Court's decision.

D. It is the position of these Appellees that the District Court's Judgment should be affirmed since the creation of dual voting units of unequal population and the requirement of separate majorities in each such unit violates

the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and that this proposition is so clear that there need be no further proceedings by this Court except to affirm without argument.

Statement of Case

In November, 1972, a Charter was placed on the ballot for Niagara County and the following vote was had:

	For	*Against*
Cities	18,220	14,914
Towns	10,665	11,594
Totals	28,885	26,508

In November, 1974, a Charter was placed on the ballot for Niagara County and the following vote was had:

	For	*Against*
Cities	11,305	9,222
Towns	8,059	8,222
Totals	19,364	17,444

Both Charters were passed by majority of the persons voting in the referendum. In the 1974 Charter there were the following provisions:

> "Section 103. *Charter Effect on State Laws.* This charter provides a form and structure of County Government in accordance with the provisions of the Municipal Home Rule Law of the State of New York, and all special laws relating to Niagara County and all general laws of the State of New York, shall continue in full force and effect except to the extent that such laws have been repealed, amended, modified or superseded in their application to Niagara County by enactment and adoption of this charter and code. Within the limitations prescribed in said Municipal Home Rule

Law wherever and whenever any state law, general, special or local in effect, conflicts with this charter or the code or is inconsistent therewith, such law shall be deemed to the extent of such conflict or inconsistency, to be superseded by this charter and code insofar as the County of Niagara and its government are affected.

Section 104. *Charter Effect on Local Laws, and Resolutions.* All local laws and resolutions of the Legislature of the County of Niagara heretofore adopted, and all of the laws of the State relating to the Towns, Cities, Villages or Districts of the County of Niagara, shall continue in full force and effect except to the extent that such laws have been repealed, amended, modified or superseded in their application to Niagara County by the enactment and adoption of this charter and code.

Section 105. *Local Government Functions, Facilities & Powers Not Transferred, Altered or Impaired.* No function, facility, duty or power of any city, town, village, school district or other district or of any officer thereof is or shall be transferred, altered or impaired by this charter or code."

These Appellees were not prevented by a Judgment concerning the 1972 Charter from adopting a new or different Charter which was done, pending the decision of the 1972 Charter, nor thereafter.

Article 9, Section 1(h)(1) of the New York State Constitution reads as follows:

> "Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county requests pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referendum by a majority of the votes cast thereon in all the villages so affected considered as one unit."

Section 33, Subdivision (7) of the Municipal Home Rule Law of the State of New York which implements *Article 9, Section 1(h)(1) of the New York State Constitution,* reads as follows:

> "A charter law
>
> (a) providing a county charter, or
>
> (b) proposing an amendment or repeal of one or more provisions thereof which would have the effect of transferring a function or duty of the county, or of a city, town, village, district or other unit of local government wholly contained in the county, shall conform to and be subject to consideration by the board of supervisors in accordance with the provisions of this chapter generally applicable to the form of and action on proposed local laws by the board of supervisors. If a county charter, or a charter law as described in this subdivision, is adopted by the board of supervisors, it shall not become operative unless and until it is approved at a general election or, in the counties of Dutchess, Orange and Chautauqua, at a special election, held in the county by receiving a majority

of the total votes cast thereon (a) in the area of the county outside of cities and (b) in the area of the cities of the county, if any, considered as one unit, and if it provides for the transfer of any function or duty to or from any village or for the abolition of any office, department, agency or unit of government of a village wholly contained in the county, it shall not take effect unless it shall also receive a majority of all the votes cast thereon in all the villages so affected considered as one unit. Such a county charter or charter law shall provide for its submission to the electors of the county at the next general election or, in the counties of Dutchess, Orange and Chautauqua, at a special election, occurring not less than sixty days after the adoption thereof by the board of supervisors. Such a county charter or charter law may provide for the separate submission to the electors at such election of one or more variations of the provisions of such county charter. Any such variation may include, but shall not be limited to, proposed transfers of functions of local government to other units of local government or a class or classes thereof."

These Sections were interpreted by the State of New York to require a dual referendum and majority vote, the cities voting as a group, and the towns voting as a group.

The quintessential question is whether the State Constitution and its implementing statute can provide a veto power by the cities of a county voting as a group, and likewise a veto power by the towns of the County voting as a group, where the majority of the voters of the County have adopted a Charter, such Charter affecting all citizens of the County equally in its impact on their lives.

Clearly there is no question of fact for the Court to decide. There is a pure question of law as to whether *Article 9, Section 1(h)(1) of the New York State Constitution,* and *Section 33, Subdivision (7) of the Municipal Home Rule Law* are permissible under the Fourteenth

Amendment of the United States Constitution, regarding the Equal Protection Clause. Therefore, no hearing or trial is necessary.

This was the same question before the District Court in the decision concerning the 1972 Charter.

POINT I

The District Court had jurisdiction to render a decision concerning the 1974 Charter and validating it as part of its prior judgment concerning the 1972 Charter.

The District Court had before it on October 6, 1975 the following Order of the United States Supreme Court:

> "The judgment is vacated and the case is remanded to the United States District Court for the Western District of New York for reconsideration in light of the provisions of the new chapter (sic) adopted by Niagara County in 1974."

On January 9, 1975, a new judgment pertaining to the 1974 Charter was entered, again considering the pure constitutionality of the 1974 Charter, in light of *Article 9, Section 1(h)(1) of the New York State Constitution* and *Section 33, Subdivision (7) of the Municipal Home Rule Law,* enunciated above, and did so, upholding the 1974 Charter.

If Appellants wished to challenge the United States Supreme Court's determination to remand, an application to reargue or submit the matter should have been made pursuant to Rule 58 of the Rules of the United States Supreme Court.

POINT II

The District Court's decision upholding the 1974 Charter was constitutionally valid.

There can be no doubt that one set of political subdivisions cannot be given a veto power over others, where all citizens are equally affected, within the rule of *Gray vs. Sanders,* 372 U. S. 368, 83 S. Ct. 801 (1963), as further elucidated in other cases discussed by the District Court in its decision on the 1972 Charter. To hold otherwise would be to institute a system of weighted voting between individual citizens for the purposes of legislating a political status quo; a concept which defies all notions of democracy. While such a plan may be good local politics, it is constitutionally impermissible and is founded upon no known rational basis. Further, such a constitutional and statutory scheme discriminates against persons because of race or color, given the differing composition of population of cities and towns in Niagara County as found in census statistics readily available.

POINT III

The District Court's injunction did not impermissibly interfere with the New York State Courts.

In *Huffman vs. Persue,* 43 L. Ed. 2d 482 (1975), relied upon by Appellants, the United States Supreme Court has apparently left open the question of Federal Court injunctions of State Civil proceedings. Even using the rule urged on the Courts by the Appellants requiring a showing of extraordinary circumstances, the injunction was proper. The Federal rights to be protected by the District Court's decision are so clear that there is no rational

basis for any State Court to be allowed to proceed with appeals. Appellants stratagem is to use dilatory tactics. The question of procedural defects under State Law was resolved summarily in favor of the Appellees by the New York State Supreme Court and the State Attorney General was in full agreement with this Judgment. The Secretary of State of the State of New York has duly certified the 1974 Charter. Furthermore, the Appellants had a full opportunity to raise such issues in the Federal District Court upon remand and chose not to do so.

POINT IV

The Judgment of the District Court should be affirmed.

Respectfully submitted,

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